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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,302	02/13/2002	Jean-Louis H. Gueret	05725.1021-00	7746

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EXAMINER

LE, HUYEN D

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/073,302

Applicant(s)

GUERET, JEAN-LOUIS H.

Examiner

Huyen Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-136 is/are pending in the application.
- 4a) Of the above claim(s) 27,32-36,38-40,88,93-97 and 99-101 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26,28-31,37,41-87,89-91,98 and 102-136 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-21, 24, 25, 30, 41-45 and 58-60 are rejected under 35 U.S.C. 102(b) as being anticipated by Pouly (No. 782.500).

The Pouly reference discloses an applicator assembly (See Fig. 3) comprising an applicator member 3 having a face configured to apply product to a surface, the applicator member 3 defining a chamber having an opening in the face; and a holder 5 configured to hold the product 1 and to be removably mounted relative to the application member 3 so as to permit the chamber to removably receive the product 1, the holder 5 having a substantially fixed axial position with respect to the application member when the holder 5 is mounted relative to the applicator member 3.

Regarding claim 6, the applicator assembly comprises a support member 4, wherein the applicator member 3 is mounted on the support member 4.

Regarding claims 9 and 10, the holder and the support member are configured to be removably engaged via screw-fastening.

Regarding claims 11-14, the holder 5 and the support member 4 comprise mutually cooperative engagement mechanisms, e.i. screw threading, for engaging the holder 5 to the support member 4.

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3. Claims 1-4,6-16, 19-26, 28-31, 41, 45, 58-64, 66-87, 89-92, 102, 118-121 are rejected under 35 U.S.C. 102(b) as being anticipated by Henriksson (2,962,743)

The Henriksson reference discloses an applicator assembly comprising an applicator member 28 having a face configured to apply product to a surface, the applicator member 28 defining a chamber having an opening in the face; a holder 20 configured to hold the product and to be removably mounted relative to the application member 28 so as to permit the chamber to removably receive the product; and a lid 32 configured to removably cover at least a portion of the application member 28.

Regarding claim 6, the applicator assembly comprises a support member 12, wherein the applicator member 28 mounted on the support member 12.

Regarding claims 9-14 and 68-74, the holder 20 and the support member 12 comprise mutually cooperative engagement mechanisms, e.i. screw threading, for engaging the holder 20 to the support member 12.

Regarding claims 26 and 87, the applicator member 28 comprises a plurality of foam blocks 40 and 42.

Regarding claims 28 and 89, the foam blocks 40 and 42 are stacked vertically upon each other.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pouly (No. 782.500) in view of Gueret (5,904,151).

Although the Pouly reference does not disclose that the applicator member 3 includes flocking on an exterior surface portion of the application member 3, attention is directed to the Gueret reference which discloses another applicator having flocking on the exterior surface of the applicator member for improving the softness and quality of the application.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the Pouly applicator member with flocking in view of the teaching of the Gueret reference in order to improve the softness and the quality of the application.

6. Claims 22, 23, 61-86, 91, 92, 98, 102-10, 118-121 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pouly (No. 782.500) in view of Gueret (5,904,151).

Although the Pouly reference does not disclose that the applicator includes a lid, attention is directed to the Gueret reference which discloses another applicator system comprising a lid (Figs. 7A, 7D and 8A) for protecting the application member when not in use.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide cap for the Pouly applicator system in view of the teaching of the Gueret reference in order to protect the application member when not in use.

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7. Claims 46-57, 106-117, 122-136 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pouly (No. 782,500) in view of Gueret (5,904,151).

Although the Pouly reference does not an applicator system comprising a plurality of application members and holders stored in case, attention is directed to the Gueret reference which teaches an applicator kit comprising a plurality of applicators of variety of different product stored in the case for easy and convenient use.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a plurality of Pouly applicator having different products disposed case in view of the teaching of the Gueret reference for easy carrying and convenient use.

8. Claims 26, 28, 29, 87, 89 and 90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pouly (No. 782,500) in view of Gueret (5,904,151).

Although the Pouly reference does not disclose the applicator member 3 includes a plurality of foam blocks stacked upon each other, attention is directed to the Gueret reference which discloses another applicator comprising plurality of foam blocks stacked upon each other.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the Pouly applicator with a stack of foam blocks in view of the teaching of the Gueret reference for provide different tones and feel to the application of the product on a user.

9. Claims 37 and 98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henriksson (2,962,743) in view of McNair (2,361,407)

Although the Henriksson reference does not disclose that the applicator member 3 includes textile on an exterior surface portion of the application member 3, attention is directed to the McNair reference which discloses another applicator having textile on the exterior surface of the applicator member for improving the softness and quality of the application.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the Henriksson applicator member with textile in view of the teaching of the McNair reference in order to improve the softness and the quality of the application.

Response to Arguments

10. Applicant's arguments filed in Paper no. 7 filed on 12/16/2003 have been fully considered but they are not persuasive.

In regarding applicant's arguments with respect to the Pouly reference that Pouly neither discloses nor suggest a holder configured to hold the product and to be removably mounted relative to the application member so as to permit the chamber to removably receive the product, and the holder having a substantially fixed position with respect to a portion of the application member, Pouly shows the holder 5 threadedly engaged with the applicator member 30 via a tubular support 4 as shown in Figure 3. The holder 5 has the same axis as the application member 3 and does not move laterally or radially as it is mounted relative to the applicator member. Furthermore, Figures 1 and 4 show the holder 2 or 6 has a same axis as the applicator member 3 and it has a fixed axial position relative to the application member. Therefore, the holder 5 is

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“removably mounted” to the applicator member 3 and has a substantially “fixed axial position” with respect to the applicator member, as claimed.

In regarding applicant’s arguments with respect to the combination of Pouly and Gueret that there is motivation to combine the Pouly and Gueret reference because the Pouly does not include a bottom having structural configuration similar to that of Gueret Bottom, the Pouly reference shows a bottom 4, to which the applicator member 3 is attached, can be changed to accommodate a lid. Modifying the structure of Pouly device to accommodate a lid for covering the applicator head is obvious to one of ordinary skill in the art.

Regarding applicant’s arguments with respect to claims 122 and 130 that Gueret does not suggest a plurality of application members and “at least one holder configured to hold the product and to be removably mounted relative to each of the application members, the Gueret reference is merely used having a kit with a plurality of applicators. Providing a kit with Pouly applicators in view of the teaching of Gueret would be obvious to one of ordinary skill in the art. Furthermore, the holder 5 of Pouly device would be capable of being removably mounted relative to each of the plurality of applicators as desired.

In regarding applicant’s arguments with respect to that Henriksson reference that Henriksson fails to disclose the holder configured to hold the product and to be removably mounted relative to the application member, Henriksson discloses a holder 20 (tube) configured to hold the product and threadedly mounted relative to the

application member 28 via a support member 12. Therefore, the holder 20 is "removably mounted" to the applicator member 28.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

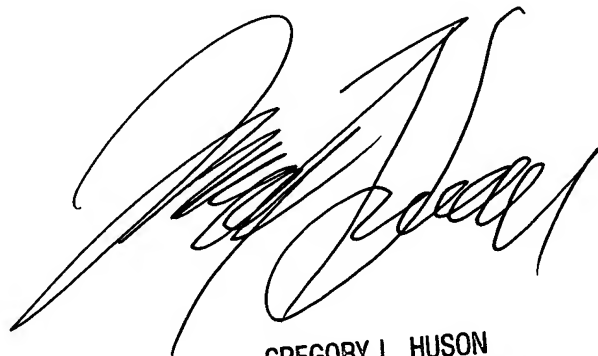
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 703-306-5504. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HL
February 19, 2004.

A handwritten signature in black ink, appearing to read "Gregory L. Huson", is written over a circular stamp.

GREGORY L. HUSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700